

OFFICIAL INFORMATIONCONFIDENTIAL**EVIDENCE CODE SECTION 1040
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: November 30, 2020

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: NON-TACTICAL UNINTENTIONAL DISCHARGE 004-20 FOR 12/8/20
CLOSED-SESSION AGENDA

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes () No (X)</u>
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Hollywood	1/12/20	10:06 p.m.		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Fox, M./Sgt. II	21 years, 6 months
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Total Involved Officer(s)

1 x Sgt. II

<u>Suspect</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit ()</u>
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Does not apply.

COP Recommendations

Tactics – Tactical Debrief, Sergeant Fox.

Drawing/Exhibiting – Does not apply.

Non-Tactical Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Sergeant Fox.

IG Recommendations

Tactics – Same as COP.

Drawing/Exhibiting – Does not apply.

Non-Tactical Unintentional Discharge – Same as COP.

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INVESTIGATION

Annotated Force Investigation Division (FID) Incident Summary¹

On Sunday, January 12, 2020, at approximately 2206 hours, Sergeant II Michael Fox, Serial No. 34582, Pacific Area Vice, was working a Human Trafficking Task Force in Hollywood Area.² The Human Trafficking Task Force was a plain-clothes assignment that began with all involved parties attending a pre-operational briefing at Hollywood Station.

According to Sergeant Fox, at the conclusion of the briefing he entered the men's restroom located in the rear hallway on the first floor. He stepped into the first stall, closed the stall door, unholstered his pistol and placed it on top of the toilet paper dispenser depicted in the below photograph. According to Fox, he removed his pistol from its holster while utilizing the restroom because it tended to slide off his unbuckled belt when he didn't.



¹ The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

² Sergeant Fox was wearing plain clothes with his Department-approved handgun on his belt. He was equipped for the taskforce with a tactical vest that included his handcuffs, TASER, a canister of Oleoresin Capsicum (OC) spray and ASP baton. Sergeant Fox' tactical vest was not on his person at the time of the incident.

When Sergeant Fox was finished, he stood up and unintentionally knocked the pistol off the toilet paper dispenser. The pistol fell approximately three feet to the tiled floor. Fox picked up the pistol and checked the sights for any damage. He did so by holding the pistol in a two-handed grip while pointing it toward the ceiling. According to Fox, he believed his index finger was along the frame of the pistol.

As Sergeant Fox was checking his sights, he canted the pistol to the left and right and unintentionally discharged a single round. According to Fox, he did not recall his finger moving to the trigger. The fired projectile travelled upward striking the post of the bathroom stall and then impacting the ceiling, as depicted in the below photograph. Fox holstered his pistol, exited the restroom and stood by to make notifications.



Lieutenant I Mark Chong, Serial No. 30157, Watch Commander, Hollywood Patrol Division, heard the gunshot from the watch commander's office and responded to the men's restroom. Sergeant Fox advised Chong of the unintentional discharge. Sergeant I Gabriel Holguin, Serial No. 37182, Hollywood Area Vice, and Lieutenant II Scott Murray, Serial No. 31756, Operations West Bureau Vice Coordinator, also heard the gunshot and responded. Sergeant Holguin monitored Fox and obtained a Public Safety Statement (PSS) while Lieutenant Murray declared himself the Incident Commander (IC) and ensured the restroom was secured and a crime scene log was initiated.

Witness Statements

There were no officers present inside the restroom at the time of the NTUD; therefore, there were no witnesses. However, officers were present inside Hollywood station and nine of them heard the fired shot. Their statements were documented on an FID Statement Form. These statement forms are contained within the FID case file and are available for review.

Injuries/Medical Treatment

No officers or civilians were injured during this incident.

Evidence

On January 12, 2020, at 2350 hours, Detective III Peter Stone, Serial No. 27168, and Detectives II Heather Gahry, Serial No. 31089, and Alejandro Soria, Serial No. 36350, FID, responded and conducted an examination of the scene. The fired projectile was not recovered as it was not visible inside the ceiling. Detective Soria recovered a single discharged cartridge casing (DCC), Item No. 1, from the floor of the adjacent bathroom stall (Addendum No. 4).

The FID investigation determined that Sergeant Fox's fired round traveled upward into the ceiling of the men's restroom.

Detective Stone took photographs of the restroom. Copies of the photographs were placed on a CD and later vaulted at TID under Control No. 311193.

Diagram measurements were taken by Detective Soria.

Weapons

Sergeant Fox was armed with his .40 Caliber Glock, Model 27, Serial No. GCF945. The pistol had a maximum capacity of ten rounds in the magazine and one in the firing chamber.

On January 13, 2020, at approximately 0120 hours, Detective Soria conducted an ammunition count on Sergeant Fox's pistol (Investigator's Note No. 1). At the time the weapon was inspected, there were nine rounds in the magazine and one round in the chamber, consistent with Sergeant Fox firing one round.

On January 17, 2020, Police Officer III Matthew Mitchell, Serial No. 37402, Firearms Training Unit, Training Division, inspected Sergeant Fox's pistol. The pistol was in good mechanical condition. All safeties were in place and working properly and the trigger pull weight was within Department specifications (Addendum No. 5).

[...]

Investigators' Notes

1. During a check of the Department's Firearm Inventory Tracking System (FITS), it was discovered that Sergeant Fox's pistol was not listed on his gun card. Further investigation revealed the pistol was listed on the card of Sergeant I Peter Kouvelis, Serial No. 36680, Central Area, and that Kouvelis had sold the pistol to Fox on September 27, 2005.

Sergeant Fox was contacted regarding the above information. He advised he purchased the weapon from Sergeant Kouvelis when they worked together in Southwest Area. He recalled he and Kouvelis transferring ownership of the gun at the LAPRAAC Gun Store and then going to the armory to have the gun placed on his card and taken off Sergeant Kouvelis' card.

Sergeant Fox was advised to contact the Department Armory and ensure the pistol was added to his inventory of registered firearms.

The commanding officers of Force Investigation Group and FID were notified of this issue and forwarded the information to the Office of Operations and Operations Central Bureau.

[This section intentionally left blank.]

CHIEF OF POLICE REPORT³

Chief of Police Findings

Tactics – Tactical Debrief, Sergeant Fox.

Drawing/Exhibiting – Does Not Apply.

Non-Tactical Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Sergeant Fox.

Chief of Police Analysis

Detention

- Does Not Apply.

Tactics

- Department policy relative to a Tactical Debrief is: *“The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance” (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

Sergeant Fox’s tactics were not a factor in this incident; therefore, they were not reviewed or evaluated. However, as Department guidelines require personnel who are substantially involved in a Categorical Use of Force (CUOF) incident to attend a Tactical Debrief, the Chief determined that it would be appropriate to recommend a Tactics finding of Tactical Debrief.⁴

During the review of this incident, the following Debriefing Point was noted:

- Firearms Manipulations – Four Basic Firearm Safety Rules

Tactical De-Escalation

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

³ The information provided in this section summarizes the analysis and findings set forth in the Chief of Police’s report for this case.

⁴ A Tactical Debrief shall be conducted for all CUOF incidents within 90 calendar days of the conclusion of the BOPC review process. *LAPD Department Manual, Volume 3, Section 792.15.*

Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Sergeant Fox was on-duty at the time of this incident but was not engaged in a tactical operation. Therefore, Sergeant Fox was not evaluated for tactical de-escalation.

Additional Tactical Debrief Topics

- **Holstering Service Pistol** – Sergeant Fox removed his service pistol from the holster and placed his unholstered service pistol on top of the toilet tissue dispenser. Sergeant Fox failed to maintain his service pistol in a secure manner. The security of a firearm in a holster is paramount to minimize the possibility of an unintentional discharge or the loss of control of the firearm. The Chief will direct this to be a topic of discussion during the Tactical Debrief.⁵

Command and Control

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage

⁵ Holstering a Back-Up or Concealed Off-Duty Firearm, Los Angeles Police Department Manual, Volume 3, Section 610.90.

resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (LAPD, Training Bulletin, Volume XLVII Issue 4, July 2018).

Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide).

Lieutenant Chong heard the gunshot from the watch commander's office and responded to the men's restroom. Sergeant Fox notified Lieutenant Chong that he had been involved in an NTUD incident. Lieutenant Chong later made notification to Department Operations Center (DOC).

Lieutenant Murray heard the gunshot and responded to the restroom. Lieutenant Murray declared himself the IC and ensured the restroom was secured and a crime scene log was initiated. He ensured that neither Sergeant Fox or any other employee was injured. Lieutenant Murray directed Sergeant Holguin to separate, monitor, and obtain a PSS from Sergeant Fox. Lieutenant Murray coordinated with Lieutenant Chong to ensure proper notifications were made.

Sergeant Holguin heard the gunshot and responded to the restroom. Sergeant Holguin separated, monitored, and obtained a Public Safety Statement from Sergeant Fox.

The actions of Lieutenants Chong and Murray, along with Sergeant Holguin, were consistent with Department supervisory training and the Chief's expectations of Department supervisors following a critical incident.

Tactical Debrief

- Each Categorical Use of Force incident merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for involved personnel to discuss individual actions that took place during this incident.

The Chief will direct Sergeant Fox to attend a Tactical Debrief that shall include discussions pertaining to the Debriefing Topics along with the following mandatory topics:

- Use of Force Policy;
- Equipment Required/Maintained;

- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

- On January 22, 2020, Sergeant Fox attended a General Training Update (GTU). All mandatory topics were covered.

During the review of the incident, the following Debriefing Topics were noted:

Unintentional Discharge

- *Firearms safety is critical. Officers must have the ability to draw, holster and manipulate weapons safely at all times, especially under stressful conditions. Firearms safety rules have been established based upon real life situations and are applicable at all times. Violations of any of the safety rules will not be tolerated.*

The Four Basic Firearm Safety Rules

1. *All guns are always loaded.*
2. *Never allow the muzzle to cover anything you are not willing to shoot.*
3. *Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
4. *Be sure of your target.*

Officers are required to know and apply the Four Basic Firearm Safety Rules throughout their careers. These rules must be ingrained into an officer's natural thought process and become second nature. Any violation of the Four Basic Firearm Safety Rules may result in the unintentional discharge of a round. This is a serious matter with the potential of having tragic results. For administrative purposes, the unintended discharge of a weapon is classified into two categories:

1. *Accidental discharge: An unintended discharge of a firearm as a result of a mechanical malfunction of the firearm, not involving the shooter.*
2. *Negligent discharge: An unintended discharge of a firearm as a result of a shooter not handling a weapon in a safe manner, violating one or more of the four basic firearm safety rules (Los Angeles Police Department Firearms Manual, July 2015).*

Administrative Disapproval - Negligent Discharge. *Finding where it was determined that the unintentional discharge of a firearm resulted from operator error,*

such as the violation of a firearm safety rule (Los Angeles Police Department Manual, Volume 3, Section 792.05).

- **Sergeant Fox** – .40 caliber, single round fired, which traveled in an upward trajectory, striking the post of the restroom stall and then impacting the ceiling.

According to Sergeant Fox, he was utilizing the restroom when he unholstered his service pistol and placed his service pistol on top of the toilet tissue dispenser. Sergeant Fox stated it was his habit to remove his service pistol from its holster while using the restroom to prevent the holster from sliding off of his belt due to the weight of the service pistol. After using the restroom, Sergeant Fox stood up which unintentionally caused the service pistol to fall approximately three feet to the tile flooring. Sergeant Fox reached down with his right hand and grabbed a hold of the service pistol and held it in an upward direction using his left hand as support. With the magazine still inserted in the service pistol, Sergeant Fox checked to see if there was any damage to the service pistol or sights. Sergeant Fox believed that his right index finger was along the frame of the service pistol and did not recall his finger moving to the trigger. Sergeant Fox canted the service pistol to the left and to the right, and unintentionally discharged one round. The fired round travelled upward striking the post of the restroom stall and then impacting the ceiling. Sergeant Fox verified that no one else was in the restroom, opened door to the restroom, and waited for responding supervisors to arrive.

Sergeant Fox recalled, "So I went down to the downstairs bathroom at Hollywood Station to use the restroom. I had sat down and I'd unholstered my gun because it will fall to the ground otherwise, 'cause of the leather -- it slides on the belt. I had placed it up on the plastic toilet cover on the left-hand side of the first stall there."⁶

"I just took it out of the holster 'cause it's a slide-on holster, so it doesn't unclip. And it falls, or it gets heavy and the whole thing will slide off, so that happened, I guess, of -- just setting it up there."⁷

"And that's why I started doing that, was 'cause it slides off the belt easy and, you know, got to come up with a better way still to deal with it."⁸

"I finished up doing what I was doing. I stood up and I don't know if I bumped the toilet seat cover, but the gun slid off and fell and hit on the ground. I hurried up and put my pants back together and stuff. I reached down to pick up the firearm. It had fallen -- when it had fallen down, I looked down and it was in front of me, in between

⁶ Sergeant Fox, Page 5, Lines 18-24.

⁷ Sergeant Fox, Page 7, Line 21 – Page 8, Line 2.

⁸ Sergeant Fox, Page 11, Lines 11-14.

the toilet seat and the stall door. So it slid off and kind of bounced forward and hit right over there.”⁹

“You know, I was just checking it like that. Right hand, but kind of supporting it with my left, but looking back and forth to visually check all sides and make sure nothing cracked or nothing got knocked off or anything like that.”¹⁰

“I reached down, picked it up with my right hand, ‘cause I’m right-handed, and I lifted it up a little bit just to inspect it ‘cause it hit -- you know, fell about three feet. So I picked it up, lifted it to inspect it, you know, make sure the sights were on -- all that kind of stuff. I believe I put my finger along the frame of the trigger when I was inspecting it and I don’t remember it going on the trigger, but it must’ve, unless something happened to it when it fell, but, I don’t know. It just, you know, went off.”¹¹

“I remember it being along the side of the frame. I don’t remember it touching the trigger, but it must have.”¹²

“Things kind of slowed down for a sec. I kind of looked down and I kind of like saw the shell casing falling still. I looked up, I saw the -- and then it kind of hit me, like, oh, crap, the gun just went off. So I immediately re-holstered it. I opened up the stall door. I looked in the bathroom to make sure nobody was in there, nobody was hurt. I opened up the bathroom door, held it open. At that point, someone was standing out there and I -- “It was me.” You know, told them that it was me and just stood by.”¹³

The Chair of the UOFRB conducted a thorough review in evaluating the circumstances and evidence related to the NTUD. The Chair of the UOFRB determined that Sergeant Fox did not properly secure his service pistol in a holster which then fell to the ground. Sergeant Fox checked his service pistol for damage with the magazine still inserted into the magazine well and with a round in the chamber. Sergeant Fox unintentionally placed his finger onto the trigger causing a round to discharge from the service pistol. A subject matter expert from the Field Officers Training Section, In-Service Training Division, advised the Chair of the UOFRB that Glock pistols, including the one used by Sergeant Fox, are equipped with a fully automatic safety system consisting of three independent mechanical safety devices that prevent premature and unintentional firing of the firearm. Therefore, the unintentional discharge could not have occurred without the trigger being pressed on Sergeant Fox’s service pistol.

⁹ Sergeant Fox, Page 5, Line 25 – Page 6, Line 9.

¹⁰ Sergeant Fox, Page 10, Lines 12-16.

¹¹ Sergeant Fox, Page 6, Lines 10-20.

¹² Sergeant Fox, Page 12, Lines 3-5.

¹³ Sergeant Fox, Page 6, Lines 7-17.

Based on the totality of the circumstances, the Chair of the UOFRB found, and the Chief concurred, that the NTUD was the result of operator error. Sergeant Fox's actions violated the Department's Basic Firearm Safety Rules, and therefore requires a finding of Administrative Disapproval (AD), Negligent Discharge. The Chief will direct that this be a topic of discussion during the Tactical Debrief.

Additional/Equipment

- **Firearms Inventory Tracking System (FITS)** – The FID investigation initially revealed that Sergeant Fox's service pistol was not registered in the Department's FITS as required per Department policy. Upon subsequent review of FITS, FID investigators determined that Sergeant Fox's service pistol was entered into FITS as of July 20, 2004.
- **Protocols Subsequent to a Categorical Use of Force** – The OIS occurred at approximately 2206 hours. According to the DOC- Incident Notification Log, notification of the incident was made at 2240 hours by Lieutenant Chong. Captain S. Lurie, Serial No. 33959, Commanding Officer, Hollywood Area, advised that this issue would be addressed with division training and the initiation of a Supervisor Action Item. The Commanding Officer of Operations – West Bureau (OWB) and the Director of the Office of Operations (OO) concurred with this action. As such, the Chief deemed no further action is necessary
- **Background** – Sergeant Fox was alone in the restroom of the Hollywood CPS. At the time of the NTUD, he was in a restroom stall surrounded by metal walls and the ceiling located above. The Hollywood CPS has a second floor that is accessible by Hollywood Division personnel to areas above the restroom, such as the Hollywood Vice Unit offices, roll call room, break room, and locker rooms. Sergeant Fox picked up the service pistol from the ground and pointed the muzzle towards the ceiling while he checked the service pistol for damage. The action of pointing the muzzle of the service pistol upward toward the ceiling, to inspect his service pistol, is not part of Department training and would have been more appropriate at the loading barrel at the Hollywood CPS. Sergeant Fox is reminded that background is an important consideration while handling any firearm and there is always a potential for injury to other officers and community members in the area.

Audio/Video Recordings

- **Digital In-Car Video System (DICVS) / Body Worn Video (BWV)** – Sergeant Fox's NTUD occurred while he was on-duty and inside of the Hollywood CPS restroom. There were no DICVS or BWVs deployed or activated during this incident.

INSPECTOR GENERAL REVIEW

Inspector General Analysis

Investigation Quality

- No significant issues of concern were identified in relation to investigation quality.

Training Issues

- No significant issues of concern were identified in relation to training.

Equipment Issues

- No significant issues of concern were identified in relation to equipment.

Detention

- Does not apply.

Tactical De-Escalation

- Does not apply.

BWV and DICVS Policy Compliance

- Does not apply.

Inspector General Recommendations

Tactics

- The OIG concurs with the Chief's findings.

Drawing/Exhibiting

- Does not apply.

Non-Tactical Unintentional Discharge

- The OIG concurs with the Chief's findings.



Mark P. Smith
Inspector General